Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

In Re: JAMES CONSTANT,

Debtor,

JAMES CONSTANT

Petitioner,

v.

ADVANCED MICRO-DEVICES, INC.
DAVID L. RAY, Trustee;
SALTZBURG, RAY & BERGMAN;

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

James Constant
1603 Danbury Dr
Claremont, CA 91711
(909) 624-1801

Pro-per Petitioner

15 pp

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QUESTIONS PRESENTED

Has the Ninth Circuit Court of Appeals decided an important federal question in a way that conflicts with a decision of the California Supreme Court and with relevant decisions of this Court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, James Constant, respectfully prays that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Ninth Circuit entered on 26 October, 1998 affirming the district court's Order Granting Advanced Micro-Device's Motion to Dismiss Bankruptcy Appeal.

OPINIONS BELOW

The unpublished written opinion of the Court of Appeals appears in Appendix A to this Petition. The unpublished order dismissing appeal in the District Court for the Central District of California appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeal's Opinion in this matter was entered on 26 October, 1998. This Court's jurisdiction is invoked under Title 28 USC 1254(1).

STATUTORY PROVISIONS INVOLVED

Bankruptcy Rule 7012(h)(3); State Law Rule of Decision statute 28 USC 1652; and patent statute 35 USC 261 are set forth in Appendix C.

STATEMENT OF THE CASE

Debtor filed a Rule 7012(h)(3) motion to dismiss an adversary case in which federal patents were returned to debtor's estate, assigned and sold under California state laws. The motion was denied by the bankruptcy court and debtor appealed to the district court which dismissed the appeal. The debtor then appealed to the Ninth Circuit which held that the notice of appeal lacked merit and would not proceed.

The basis for federal jurisdiction in the bankruptcy court was 11 USC 544(b) and California Civil Codes 3409.04 and 3405.05 (assignment of patents to the trustee in Adversary Proceeding No. LA 91-06842 KL) and 11 USC 363(f)(1) and California state law (sale of patents to creditor Advanced Micro-Devices, Inc. in Bankruptcy Case No. LA 89-19270 KL).

Debtor's standing to attack the sale of patents is based on the fact that patents were sold to creditor Advanced Micro-Devices, Inc. by debtor's estate in debtor's Bankruptcy Case No. LA 89-19270 KL).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the reason that the Ninth Circuit has decided the important federal question of ownership and sale of federal patents in a way that conflicts with the decisions of California's Supreme Court in *Farmland, infra,* and conflicts with the relevant decisions of this Court in *Crown Die, Davis,* and *Bender, infra.*

The explicit language of Bankruptcy Rule 7012(h)(3) provides that a suggestion that a court lacks jurisdiction, can be brought at any time.

A. The California Supreme Court Decision

The California Supreme Court has held that California state laws cannot be used to interfere with patent policy and to undermine the patent monopoly. *Farmland Irrigation Co., Inc. v. Dopplmaier* (Cal. SCT 1957) 48 Cal2d 208, 308 P2d 732, 113 USPQ 88, 66 ALR2d 590. *Farmland*, therefore, is the rule of decision on patent matters at bar. 28 USC 1652.

The Ninth Circuit's decision, Appendix A, is wrong as a matter of law because "California state laws cannot be used to interfere with patent policy and to undermine the patent monopoly". *Farmland, supra*. The courts below, therefore, lacked authority to assign and sell patents under California state laws.

B. The Relevant Decisions by This Court

My claim of ownership of patents[1] arises under federal patent statute 35 USC 261. The jurisdiction of the district court was based, in whole or in part, on 28 USC 1338. The District Court, therefore, lacked jurisdiction to hear this appeal[2]. 28 USC 1291, and 1295. A federal appellate court has special obligation to satisfy itself not only of its own jurisdiction, but also the jurisdiction of lower courts in case under review. *Bender v. Williamsport Area School District* (US 1986) 89 LED2d ___, 106 SCt 1326.

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1 patents that I had transferred to my wife that weere assigned and sold by the bankruptcy court under inapplicable California state laws in related case CA9 96 56 122/3.

2 The Federal Circuit has sole jurisdiction to decide whether a district court has jurisdiction of a case as arising under the patent laws within the meaning of 28 USC 1338. *C.R. Bard, Inc. v. Schwartz* (CAFC 1983) 716 F2d 874,219 USPQ 197.

An assignment of a patent is a transfer of ownership interest in the patent and is specifically authorized and regulated by 35 USC 261. page 676 note 2; page 677 note 3. The court ordered assignment and sale of debtor's was not specifically authorized and regulated by 35 USC 261. Questions of patent assignments arise under the patent laws. *Crown Die & Tool Co. v. Nye Tool & Machine Works* (1923) 261 US 24, 67 LEd 5166, 43 Sct 254; SCt background US LEd Digest Courts 291. The courts below, therefore, cannot use California state laws and procedures California Civil Codes 3409.04 and 3405.05 (assignment of patents to the trustee in Adversary Proceeding No. LA 91-06842 KL) and 11 USC 363(f)(1) and California state law (sale of patents to creditor Advanced Micro-Devices, Inc. in Bankruptcy Case No. LA 89-19270 KL). Federal law insulates patents from state law procedures. *Re Peregrine* (Bkrtcy CD Cal 1990) 116 BR 194. My federal patent rights cannot be defeated by local rules. *Davis v. Wechsler*, 263 US 22,24.

Federal law governs the assignability and sale of patents because of the conflict between federal patent policy and state laws, such as California's, that would allow assignability and sale[3].

A patent right cannot be assigned or sold unless the patent owner authorizes the assignment or sale[4]. *In Re CFLC, Inc.* (Everex) 89 F3d 673 (CA9 1996) page 679 col 2 lines 22-23. Because federal law governs the transfer of patents and because federal law makes such transfer only with the consent of the patent owner, debtor's patents

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3 Patents at bar were assigned by the bankruptcy court to the bankruptcy trustee under California state laws Cal. Civ. Code 3439.04 and 3439.05. Patents returned to debtor's estate were then sold by the bankruptcy trustee under 11 USC 363 (f)(1) and California state laws.

4 At no time have I authorized the assignment or sale of patents at bar to the bankruptcy trustee.

cannot be assigned and sold under California state laws and procedures[5].

State law is limited to ascertaining the relative priority of patent liens. *Re Transportation Design* (BC SD Cal. 1985) 48 BR 635,639-40. The district court lacked jurisdiction to transfer my federal patent rights under color of inapplicable state laws and procedures.

The Ninth Circuit's decision, Appendix A, is wrong as a matter of law because "Questions of patent assignments arise under the patent laws" *Crown Die, supra,* because "Federal patent rights cannot be defeated by local rules", *Davis v. Wechsler,* 263 US 22,24. The Ninth Circuit lacked jurisdiction to hear petitioner's appeal because my claim of ownership of patents arises under the patent laws for which it lacks appellate jurisdiction. "A federal appellate court has special obligation to satisfy itself not only of its own jurisdiction, but also the jurisdiction of lower courts in case under review. *Bender, supra.*

In view of *Farmland, Crown Die, Davis,* and *Bender, supra,* the assignment and sale of patents under color of California state laws and procedures constitute violations of my legal rights and constitutional rights of due process and taking of property without compensation.

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5 I claim the bankruptcy court lacks jurisdiction to void, assign and sell patents under bankruptcy laws 28 USC 1334(e), 11 USC 544(b), 11 USC 363(f)(i) and California state laws. I further claim that the voiding, assignment, and sale of patents is specifically authorized and regulated by 35 USC 261. Everex, supra page 677 note 3.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the Order of the Court of Appeals in this matter[6].

Dated: 1/15/99

Respectfully submitted

James Constant

Pro Per Petitioner

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6 If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of the opinions in *Farmland, Crown Die, Davis, and Bender, supra.*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(Ent. 10/26/98)

In re: JAMES CONSTANT,	)	No. 94-80318
	)	DC#CV 98-4648
Respondent.	)	RSWL Central
	)	California
	)	
	)	ORDER
	)	

Before: T.G.NELSON,KLEINFELD,and HAWKINS,
Circuit Judges

This Court has reviewed the notice of appeal and accompanying documents filed August 3, 1998 in the above referenced district court docket pursuant to the prefiling review order entered in this docket. Because the appeal lacks merit, it shall not be permitted to proceed.

A certified copy of this order served on the district court shall act as and for the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Ent. 07/30/98)

JAMES CONSTANT,	)	Case No:
	)	CV98-4648RSWL
Appellant,	)	Bankruptcy Case No:
	)	SV 89-19270
v.	)	BAP Case No:
	)	CC 98-1380
	)	
DAVID L. RAY,	)	ORDER GRANTING
	)	ADVANCED MICRO-
Appellee.	)	DEVICES' MOTION TO
	)	DISMISS BANKRUPTCY
	)	APPEAL

The current appeal by appellant/debtor James Constant ("Appellant") stems from two orders of the Bankruptcy Court: (1) a June 3, 1997, order denying Appellant's post judgement motion seeking retroactive dismissal, on purported grounds of lack of subject matter jurisdiction, of an adversary action (LA 91-06842-KL) (the "Adversary Action") brought by the Chapter 7 trustee within the bankruptcy proceeding; and (2) a May 12, 1998, order denying appellant's motion to amend the June 3, 1997, order to reflect that the order constitutes a final judgement.

Currently before the Court is creditor Advanced Micro-Devices, Inc.'s ("AMD") Motion to Dismiss. AMD's Motion is hereby GRANTED on grounds that: (1) Appellant lacks standing to attack the judgement in the Adversary Action because he was not a party to that action and because he did not have any interest in the patents that were the subject of the Adversary Action; and (2) Appellant's claim that the bankruptcy court lacked jurisdiction to dispose of the fraudulently transferred patents was already rejected by the Ninth Circuit and is therefore barred by the

doctrines of res judicata and collateral estoppel.

IT IS SO ORDERED.

RONALD S. W. LEW
United States District Judge

DATED: July 29, 1998

Bankruptcy Rule 7012 ncorporates Civil Rule 12(h)(3), which provides:

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

28 USC 1652 State Laws as Rules of Decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United states, in cases where they apply.

35 USC 261 Ownership; Assignment

..... patents, or any interest therein, shall be assignable in law by an instrument in writing. The ... patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his ... patents, ..

An assignment ... shall be void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from the date or prior to the date of such subsequent purchase or mortgage.